



U.S. Customs and
Border Protection

APR - 8 2004

OFO:IPP:JBK

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
DIRECTOR, PRECLEARANCE OPERATIONS

FROM: Assistant Commissioner
Office of Field Operations

SUBJECT: Interim Guidance: Jurisdiction and Authority for Waivers of
Inadmissibility under Section 212(d)(3) of the Immigration
and Nationality Act (INA)

On March 1, 2003, all functions of the Immigration and Naturalization Service transferred to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (Public Law 107-296). The Secretary of DHS delegated to the Commissioner of U.S. Customs and Border Protection (CBP) various authorities, including:

“Authority to enforce and administer the immigration laws relating to the inspection and admission of people seeking admission to the United States, including the authority to make admissibility determinations (including the adjudication of related waivers of inadmissibility), set the duration, terms, and conditions of admission (including bond or any other appropriate conditions of admission).”

It has been decided that CBP will:

- 1) assume responsibility for considering section 212(d)(3)(A) waivers requested from consular posts in Canada,
- 2) continue to exercise “seat of government” authority for section 212(d)(3)(A) waiver recommendations made by the Department of State, and
- 3) assume all responsibility for adjudicating section 212(d)(3)(B) waivers.

CBP continues discussions with U.S. Citizenship and Immigration Services (CIS) and U.S. Immigration and Customs Enforcement (ICE) about section 212(d)(3)(A) waivers submitted from other consular posts. These recommendations, by regulation, are forwarded to ICE Offices in Rome, Bangkok, and Mexico City. This guidance does not change that procedure.

Applications submitted under section 212(d)(3)(A). The Executive Director, Immigration Policy and Programs (IPP), will exercise authority for section 212(d)(3)(A) waiver recommendations from consular posts in Canada and “seat of government” recommendations made by the Department of State (DOS). Consular posts in Canada

and the Consular Affairs office at the DOS will forward their recommendations directly to IPP at Headquarters.

Applications submitted under section 212(d)(3)(B). Title 8, Code of Federal Regulations, Part 212.4(b) requires that an application for the exercise of discretion under section 212(d)(3)(B) of the INA shall be submitted on Form I - 192 to the district director having jurisdiction over the alien's intended port of entry prior to the applicant's arrival in the United States. The term "district director" includes a director, field operations (DFO) (8 CFR 1.1(o)).

Each DFO has responsibility for section 212(d)(3)(B) applications submitted prior to arrival at ports of entry in the DFO's area. The Director, Preclearance Operations, has jurisdiction for section 212(d)(3)(B) applications submitted by applicants traveling to the United States from pre-clearance stations. Applications already pending at a port will be worked to completion.

Approval and denial decisions will be made under the authority of the Director, Field Operations (DFO). Signatory authority to approve or deny an application may be delegated no lower than a GS-14 Port Director (PD) or GS-14 Assistant Port Director (APD) for Passenger Operations.

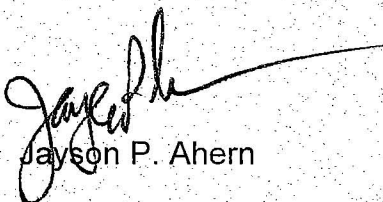
Each DFO will identify a centralized location(s) and existing resources to make decisions for section 212(d)(3)(B) applications, identifying any PD or APD delegated signatory authority to approve or deny applications. By April 23, 2004, DFOs should forward draft plans electronically to John Klow, IPP, in OFO.

Ports will continue to fingerprint waiver applicants and forward the completed FP chart to the office with jurisdiction over the application. A port may take fingerprints for an applicant whose request is pending in another field office area.

A-files will be obtained from and returned to the Records office providing service to the CBP port performing the waiver decisions.

CBP officers should continue to use adjudications approval stamps issued through the CIS control system. Logistics is working to procure CBP approval stamps for replacement.

Guidelines for consistent decision-making will be forwarded soon. Questions about this procedure may be directed to Linda Loveless at 202-927-2493.



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